

**LOW BOON POR v.
SELANGOR ENGINEERING WORKS**

[O.C.J. (Abdul Hamid J.) November 13, 1970]

[Kuala Lumpur — Civil Suit No. 967 of 1967]

Practice and Procedure — Judgment on admissions of facts — Discretion of court — R.S.C. 1967, O. 32 r. 6.

The plaintiff applied under R.S.C. O. 32 r. 6, for an order that he be at liberty to sign judgment for the sum of \$6,000 and interest. The claim was brought against the defendants as drawer of two cheques for \$2,000 and \$4,000 respectively. An application by the plaintiff for leave to sign final judgment under O. 14 had been refused. The defendants had filed a defence in which they contended that the transactions were moneylending transactions.

Held: as the defendants had by their defence raised an issue of law, this was not a case in which O. 32 r. 6 should apply. The application must therefore be dismissed.

Cases referred to:-

- (1) *Malacca Precast Concrete Works v. William Jacks & Co. (M) Sdn. Bhd.* [1970] 2 M.L.J. 111.
- (2) *Gore v. Gore* [1964] M.L.J. 184.

CIVIL SUIT.

Kok Wee Kiat for the applicant/plaintiff.

M. Segaram for the respondents/defendants.

Abdul Hamid J.: This is an application by the plaintiff/applicant under Order 32 rule 6 of the R.S.C. for an order that the plaintiff may be at liberty to sign judgment for the sum of \$6,000 and interest.

In his claim, the plaintiff alleges that the defendant firm are indebted to him for cash advances he had made. Alternatively the plaintiff claims against the defendants as drawer of two cheques Nos. 196998 and 160637 on the sum of \$2,000 and \$4,000 respectively both dated 24th May, 1967 drawn upon Banque de L'Indochine at Kuala Lumpur.

On 22nd August, 1967, the plaintiff applied under Order 14 of the R.S.C. to sign final judgment against the defendants.

On 5th October, 1967, the Senior Assistant Registrar dismissed the application and granted the defendants unconditional leave to defend. No appeal was filed by the plaintiff.

On 23rd October, 1967, the defendants filed their defence. In paragraph 5 of their defence, the defendants contended that the dealings with the plaintiff were purely money lending transactions. It is further contended that the sum claimed was lent for interest and that the defendants paid interest continuously until 9th June, 1967.

On 30th October, 1967, the plaintiff filed a reply denying the defendants' allegation.

On 15th July, 1970, the plaintiff filed this application. In support of the application, the applicant relied upon three letters, one of which was written by the plaintiff's solicitors to the defendants on 30th May, 1967 notifying the defendants that the two cheques were dishonoured and demanding the repayment of the said sum. By a letter dated 10th June, 1967, the defendants replied giving reasons why they were un-

A able to pay the sum claimed and offered to pay \$150 per month "towards the account." Again on 29th June, 1967, in reply to another letter from the plaintiff, the defendants gave reasons for their inability to pay and this time offered to settle by monthly instalments of \$300 per month.

At the hearing of the application, Mr. Kok Wee Kiat, counsel for the applicant, cited the case of *Malacca Precast Concrete Works v. William Jacks & Co. (M) Sdn. Bhd.*⁽¹⁾ and submitted that following that case, an application under Order 32 rule 6 may properly be made even after an application for summary judgment under Order 14 has been refused. It is urged that this court should exercise its discretion in favour of the applicant. Mr. Kok argued that there is only a technical defence of illegal money transaction.

Mr. Segeram, counsel for the respondent submitted that the facts in *Malacca Precast Concrete Works, supra*, are different from the facts of this case and submitted that where a question of law is raised, Order 32 rule 6 does not apply. He cited *Gore v. Gore*⁽²⁾ where at p. 185 Thomson L.P. said:

"Now, with great respect, I do not think the case was a very suitable one to be disposed of under Order 32 rule 6. There was, of course, a discretion to deal with it in that way but, as was pointed out by Mellish L.J. in the case of *Gilbert v. Smith*, in relation to the corresponding English rule prior to 1883, 'the rule was not meant to apply when there is any serious question of law to be argued'...."

E And at p. 186 his Lordship went on to say that:

"In effect rule 6 of Order 32 only applies when on the pleadings a defendant has no good defence and for the purpose of considering the application of the rule the court must accept the contents of the defence as true (see *United Telephone Co. v. Donchee* 31 Ch. D. 399)."

Rule 6 of order 32 which reads:

F "6. Any part may at any stage of a cause or matter, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the court or a judge for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court or a judge may upon such application make such order, or give judgment, as the court or judge may think just"

G I think, clearly permits any party to apply to the court to sign judgment where admissions of fact have been made. Nevertheless it seems clear that it is a discretionary matter and the court will only allow the application where on the pleadings, the defendant has no substantive defence.

H In *Malacca Precast Concrete Works, supra*, the facts have been shown that the defendants, though they obtained unconditional leave to defend, did not file any defence and a sum of \$10,000 was sent by solicitors purporting to act on behalf of the defendants towards the debt. Referring to O. 32 r. 6 Ali F.J. said at p. 112:

I "This time the application was made under O. 32 rule 6, the terms of which have already been set out. Whether or not this rule applied in view of what have happened previously was not argued but it seems implicit in the judgment of Sharma J. who heard the application on the 2nd May, 1969 that it did apply."

And furthermore the decision in that case should, I think, be viewed in the light of the observation made by his Lordship at p. 113 when he said:

"But no defence whatsoever was filed and in the usual way the plaintiffs would have been entitled to obtain judgment under O. 27 rule 2 of the Rules of the Supreme Court. It is not necessary to speculate as to what would have happened if a defence had been filed."

In the instant case the defendants would appear by their letters dated 10th June, 1967 and 29th June, 1967 to have admitted the loan. Nevertheless they have from the pleadings, raised an issue of law. If the defendants should succeed in their defence at the trial of this action, they would then be relieved from the liability to pay the plaintiff. In this particular case, I am of the opinion that there is a substantive defence founded upon section 15 of the Moneylenders Ordinance, 1951. Section 15 of the Ordinance reads:

"15. No contract for the repayment of money lent after the coming into force of this Ordinance by an unlicensed moneylender shall be enforceable:"

and under section 3 of the said Ordinance:

"3. ... any person who lends a sum of money in consideration of a larger sum being repaid shall be presumed until the contrary be proved to be a moneylender."

Mr. Segaram drew the court's attention to a receipt issued by the plaintiff's solicitors which shows that a sum of \$200, *vide* cheque No. 31748, was received from the managing partner of the defendant firm on 9th June, 1967. This fact tends to show that some sort of payment was made on that date. The defendants are saying that on the date in question, they made a last payment of interest to the plaintiff's solicitors. Mr. Kok, however, explained that this receipt has no relation to the matter under consideration. Nonetheless it is apparent that the plaintiff in his affidavit of documents, did affirm that he has in his possession documents relating to the matters in question and one of these was cheque No. 31748.

In the circumstances, it is my judgment that this is not a case in which rule 6 of Order 32 should apply.

For these reasons, I think the application should be dismissed with costs.

Application dismissed.

Solicitors: *Mah & Kok; M. Segaram & Co.*

PUBLIC PROSECUTOR v. A.G. KYLE-LITTLE & ANOR.

[A.Cr.J. (Abdul Hamid J.) November 18, 1970]

[Kuala Lumpur — Selangor Criminal Appeal No. 44 of 1970]

Bribery and Corruption — Document — Whether "other document" include pipes on which writing or marks are expressed upon them — Prevention of Corruption Act, 1961, s. 4(c).

The first respondent was charged as manager of Hume Industries (Malaya) Ltd., Petaling Jaya, that by authorising the delivery of a batch of 126 6" Class 'C' Asbestos Cement Pressure Pipes manufactured by 'B' shift on March 31, 1967, he did knowingly give to one Zainuddin bin Ariffin, an agent of the Government of Malaysia, 26 documents bearing "31 MAR 67B 50P 42 HPJ BSS 486 1956 HUME 6" Class C JKR 67" marks expressed upon 26 lengths of the said batch of the pipes, to the value of \$632.84 cents, supplied and delivered

A to Jabatan Kerja Raya, *vide* Contract No. P.W.D. FED. HQ. 237 of 1966, in respect of which his principal representing the Government of Malaysia was interested, and which documents contained statements which were false in material particulars and thereby committed an offence punishable under section 4(c) of the Prevention of Corruption Act, 1961. The second respondent was charged with the abetment of the same offence, punishable under section 4(c) read with section 11 of the Act. The respondents were acquitted by the sessions court. The Public Prosecutor appealed.

B One of the grounds of appeal was that the learned president erred in law and on the facts when he held — "Even if the pipe is a document it is not *ejusdem generis* with the genus contemplated by section 4(c) of the Prevention of Corruption Act, 1961." Counsel for the appellant submitted that "pipe" in this particular case was a document for purposes of section 4(c) of the Act."* He drew the attention of the court to the definition of "document" in section 29 of the Penal Code, section 3 of the Evidence Ordinance and section 3 of the Interpretation Act, 1967. Counsel for the respondent *inter alia* submitted that the meaning of "document" in section 4(c) of the Act was clear and required no rule of construction.

C Held, dismissing the appeal: (1) in considering the construction to be placed upon the word "document" the court should not lose sight of the fact that the Prevention of Corruption Act, 1961 is a penal statute and a person convicted under section 4(c) is liable not only to a pecuniary penalty but to a term of imprisonment or to both pecuniary penalty and imprisonment. The court shall, in construing any words in that penal statute within which a case may be held to fall, apply the rule of strict construction;

D (2) for purposes of section 4(c) of the Prevention of Corruption Act, 1961 the words "other document" do not include pipe or pipes on which writing or marks are expressed.

E *Case referred to:-*

(1) *Hashim v. Public Prosecutor* [1967] 1 M.L.J. 251.

CRIMINAL APPEAL.

Ajaib Singh (Senior Federal Counsel) (*Sulaiman Hashim* (Deputy Public Prosecutor) with him) for the appellant.

F *Dato' David Marshall* (*R. C. Hoffman* with him) for the respondents.

Cur. Adv. Vult.

G **Abdul Hamid J.:** This is an appeal by the Public Prosecutor against the decision of the learned President, Sessions Court, Kuala Lumpur who acquitted the respondents on the following charges.

The charge against the first respondent was —

H "That you between the 17th day of April and the 7th day of August, 1967 at Hume Industries (Malaya) Ltd., Petaling Jaya, in the District of Kuala Lumpur, in the State of Selangor, as manager of the said limited company, by authorising the delivery of a batch of 122 6" class 'C' asbestos cement pressure pipes manufactured by 'B' shift on 31st March, 1967, did knowingly give to one Zainuddin bin Ariffin, the store-keeper of the Jabatan Kerja Raya, Taiping, an agent of the Government of Malaysia, 26 documents bearing "31 MAR 67B 50P 42 HPJ BSS 486 1956 HUME 6" Class C JKR 67" marks expressed upon 26 lengths of the said batch of pipes, to the

I * Section 4(c) of the Act provides that if "any person knowingly gives to an agent, or if an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal, he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand dollars or to both such imprisonment and fine."